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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

██████████  
██████████████████  
██████████████████

DECISION

KIN/152348

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 23, 2013, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Perez-Pena Limited in regard to Kinship Care, a hearing was held on October 29, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied Petitioner's application for Kinship Care benefits for Petitioner's great-granddaughter.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████  
██████████████████  
██████████████████

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Stephanie Purpero and Tracy Pachowitz, of PSG on behalf of  
Bureau of Milwaukee Child Welfare  
Milwaukee, WI

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner applied for Kinship Care for her great granddaughter, ██████, in August 2013 with the agency which previously handled Kinship Care for the BMCW in Milwaukee County. ██████ is 14 years of age (7/7/99).
3. ██████'s father's whereabouts are unknown. ██████'s mother (██████) lives in Waukegan Illinois but her address is not known. Neither was interviewed by the agency that processed the application.

4. [REDACTED] has lived with Petitioner her entire life.
5. [REDACTED] has another child (a young man approximately 12 years old) but that child does not reside with [REDACTED]; rather, the child lives with his father.
6. [REDACTED] does not visit [REDACTED] though there some phone contact but it is sporadic.
7. Petitioner does not have a guardianship in place for [REDACTED].

### DISCUSSION

The Kinship Care benefit is a public assistance payment of \$220 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments, the relative must meet all of the conditions set forth in *Wis. Stat. §§ 48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6)*. Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

For a guardianship based Kinship Care application under statutory subsection (3n) the Wisconsin Administrative Code further requires that the Kinship Care applicant provide proof that they have been named as guardian under *§48.977, Stats.; Wis. Admin. Code, §DCF, 58.15*. In this case, there is no guardianship so I cannot find that Petitioner is eligible to receive Kinship under guardianship provisions.

This decision must still decide whether Petitioner's case meets CHIPS based Kinship Care eligibility criteria. The Statutes require that:

...A county department and, in a county having a population of 500,000 or more, the department shall make payments in the amount of \$215 per month to a Kinship Care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The Kinship Care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the Kinship Care relative and that the placement with the Kinship Care relative is in the best interests of the child.
  2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.
- §48.57(3m)(a)2(am), Wis. Stats.*

The *Wisconsin Administrative Code*, at *§DCF 58.10(1)*, describes the "need" for placement as follows:

- (a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:
  1. The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
  2. The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
  3. The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
  4. The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

It must also be noted that, in Decision No. KIN-40/51985, dated May 22, 2002, the Department's deputy secretary concluded that even when the assessor finds that one of the four grounds cited above are met, there still must be evidence that there is a risk to the child cited in Wis. Stat. §48.13 if the child were to live with a parent. Essentially that decision ties together the first two conditions cited in *Wis. Stat. §48.57(3m)(am)*, that there be a need for the placement and that the child be at risk of harm that could lead to a Child In Need of Protection or Services (CHIPS) case. It also confirms that at least one of the criteria in the list at *Wis. Stat. §48.13* must be satisfied.

Chapter 938 of the Statutes deals with juvenile justice issues and juveniles involved in delinquencies who also need protection or services; Chapter 48 is entitled 'Children's Code' and is the relevant chapter for this case. The statutory citation referenced above – *Wis. Stat. §48.13*, which provides for jurisdiction over children alleged to be in need of protection or services – is relevant here and provides as follows:

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;
- (2m) Whose parent has relinquished custody of the child under s. 48.195 (1);
- (3) Who has been the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another;
- (3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;
- (4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;
- (5) Who has been placed for care or adoption in violation of law;
- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;

(11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).  
 §48.13, Wis. Stats.

In a nutshell, the placement must be in the best interests of the child and there must be need for the placement as demonstrated by evidence of the child being a CHIPS or JIPS child or the likelihood that the child would be such if living with a parent.

I am reversing the denial of Petitioner's application for Kinship Care. The child has lived with Petitioner for her entire life. The biological parent's whereabouts are unknown except that the mother is in the Waukegan area. She does not visit the child. The denial decision was based on a case analysis performed by a worker with a prior agency, thus the agency testimony consists of hearsay. Administrative decisions cannot be based solely upon uncorroborated hearsay. . *Gehin v. Wisconsin Group Ins. Bd.*, 2005 WI 16, ¶¶ 53-56 & 58, 278 Wis. 2d 111, 692 N.W.2d 572; See also, *Williams v. Housing Auth. of City of Milwaukee*, 2010 WI App 14, ¶¶ 14 & 19, 323 Wis. 2d 179, 187 & 189, 779 N.W.2d 185 ("[u]ncorroborated hearsay evidence, even if admissible, does not by itself constitute substantial evidence."). Further, the prior agency written report has errors, e.g., the birthdate of ■■■ is noted to be 8/1/11, she is noted to be a male and CPS involvement is noted though that does not seem to be the case as to ■■■. This further undermines its reliability.

Petitioner and a maternal aunt testified. This is the only direct evidence in this case. Their testimony was that there has been no visitation between ■■■ and ■■■ since 2001. They testified that there has been phone contact but it is infrequent. I am concluding that the parents have abandoned this child to the care of Petitioner long ago. They have not made any tangible steps towards providing cares or taking legal custody, and offer no care for the young lady. She would be at risk of being abandoned if not for the cares of Petitioner. This placement is clearly in her best interests.

### **CONCLUSIONS OF LAW**

That the available evidence demonstrates that ■■■ meets the criteria best interests and of §48.13, Wis. Stats., thus the agency incorrectly denied Petitioner's application for Kinship Care for ■■■.

**THEREFORE, it is**

### **ORDERED**

That the matter is remanded to the agency with instructions to rescind and reverse the denial of the Petitioner's application for Kinship Care and establish her as eligible for Kinship Care benefits for ■■■ retroactive to the Petitioner's application date. This action shall be completed within 10 days of the date of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

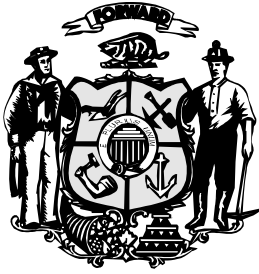
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 10th day of January, 2014

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 10, 2014.

Perez-Pena Limited  
DCF - Kinship Care  
DCF - Kinship Care